

# The Pursuit of Long-Term Affordability

Lisa Fisher Henderson



April 1, 2006

# What if...

You are a developer interested in setting aside a few affordable units in a traditional subdivision?



# What if...

You are a municipality using incentives to stimulate production of affordable, workforce housing?





# What if...


You are a municipality or housing agency needing to stretch limited housing subsidy dollars?



# What if...

You are a citizen  
concerned about  
maintaining  
diverse  
communities?





**GOAL:**  
Create and maintain  
affordable workforce housing



# Housing gets built when...

## \$

Acquisition/Predevelopment

Subsidies

Financing

## Opportunity

Land

**Zoning**

Welcoming Community

# Inclusionary Zoning

- ✓ A mechanism to spur affordable housing development within the private market
- ✓ Promotes mixed-income development, where a portion of the new units created are reserved for specified low to moderate income households, while the remaining units are sold or rented at or above market value
- ✓ Incentives for developers entice utilization of the ordinance
  - Density bonuses in return for units reserved for low and moderate households
  - Reduction or waiver of impact fees
  - Expedited permitting
  - Zoning exemptions
  - Reduced parking provisions



# Subsidy Sources

- ☛ Incentives in exchange for providing affordable housing create a “subsidy” to the project.

Other sources include...

- ☛ Federal or State Grants
- ☛ NH Housing Finance Authority \$
- ☛ Municipal \$
- ☛ Developer \$
- ☛ Foundation \$

Depending on how much subsidy is available now and projected into the future, a municipality (or whomever is providing the subsidy) may consider one of two options for the time of resale:

**Recapture the subsidy**  
*or*  
**Retain the subsidy**

# Options

## Recapture:

Homeowner pays back \$

### PROS:

- ✓ Wealth building
- ✓ Easy to administer

### CONS:

- ✓ Over time, larger and larger subsidies needed to serve same population

## Retention:

Subsidy is embedded in the home

### PROS:

- ✓ Scarce subsidy \$ can help more families who otherwise would be priced out

### CONS:

- ✓ Limited equity
- ✓ More complicated



# Issues & Options

1. Goals
2. Duration
3. Eligibility
4. Use
5. Improvements
6. Resale Formula
7. Restrictive Covenant vs. Preemptive Option
8. Legal Instrument
9. Administration
10. Cost

A good ordinance will address all of these issues!

# 1. Ordinance Goals: Conditions under which the ordinance applies

- What the purpose of the ordinance? What supporting documentation justifies the need for inclusionary housing (i.e. regional housing needs assessments)?
- Size of developments? Is there a minimum number of new units required? Required % of developments that must be affordable?
- What zoning districts can the inclusionary housing ordinance be applied to?

# 1. Other Ordinance Goals:

## Requirements for inclusionary housing developments

- What type of housing is permitted? Single-family, two-family, multi-family, manufactured homes, condominiums? Owner occupied or rental units?
- Set location requirements if desired – affordable units in proximity to the market rate units – do we want to require mixing of units?
- Timing or phasing requirements – should the market and affordable units be built simultaneously? Affordable units provided up front?
- Comparability of unit quality – any construction or design standards to be set? This could restrict the ability to create affordable units.



## 2. Duration

- ✦ **Perpetuity:** If a developer is given a benefit, such as a density bonus, should the covenant should last the length of the zoning relief?
- ✦ **30 years renewable upon resale:** Getting closer to perpetuity without this issue of the “rule against perpetuities”?
- ✦ **Long Term (10-30 years) and/or equity appreciation scaled with length of residency:** A “reward” of equity appreciation for long-term residents?
- ✦ **Short Term (3-10 years):** Is housing production more important than preserving affordability?

### 3. Eligibility: Should the buyer be “eligible”?

#### Income – Affordable to...?

- Households at or below **80%** of **HUD Metropolitan Fair Market Rent Area (HMFA)** Median Income
- Households at or below **120%** of HMFA Median Income
- What is the housing cost burden level? 30 or 35 percent of the household income?

#### Residency

#### Other

## 4. Use: Should use of the property be regulated?

- ✓ **Occupancy:** Do you want to require that this be their primary residence, as evidenced by occupancy certain # of months/year?
- ✓ **Use:** Residential use only? In home businesses ok?
- ✓ **Subletting:** Will you allow?
- ✓ **Transfers resulting from death, divorce, deed in lieu of foreclosure:** Should resale restrictions remain?
- ✓ **Leasing, refinance, encumbering, or granting a mortgage on the home:** Allowed? Prior approval needed?



## 5. Improvements: Should proposed improvements be reviewed and approved?

- **Notification and Review:** Should the administrative entity approve/deny?
- **Prior Approval:** Should the administrative entity get a heads-up?
- **No Approval Required:** Give homeowner as many rights as conventional homeownership? Allow resale formula to address increases/decreases in value?

## 6. Resale Formulas:

What balance should be achieved between  
“fair return” for present homeowner and  
“fair access” for future buyer?

### 3 options

#### 1) Indexed Formulas

- Adjust the original purchase price by applying a single factor, e.g. change in median income, CPI
- $\text{Purchase price} \times \text{change in index} = \text{resale price}$

## 6. Resale Formulas – 3 options

### 2) Itemized Formulas

- Adjust the original purchase price by adding or subtracting factors that affect the value of the owner's investment in the home and that affect the value of the home itself
- Purchase price + homeowner equity invested or earned to date x inflation factor + value of improvements – depreciation – damage beyond normal wear and tear = resale price



## 6. Resale Formulas – 3 options

### 3) Appraisal-based Formulas

- Adjust the original purchase price by adding a certain percentage of any increase in the home's value as measured by market appraisals at the time of purchase (Appraisal 1) and at the time of resale (Appraisal 2). The homeowner receives a predetermined % of appreciated value.
- $\text{Purchase price} + [(\text{Appraisal 1} - \text{Appraisal 2}) \times 25\%] = \text{resale price}$

# 7. Restrictive Covenant vs. Preemptive Option: How are future sales handled?

- ☞ **Restrictive Covenant:** Future affordability and use in the hands of homeowner who must sell to an eligible buyer at a formula-driven price.
- ☞ **Preemptive Option:** Third party right to re-purchase
- ☞ **Combination:**
- ☞ *Example...*
  - Administrative entity (AE) has right of first refusal
  - Homeowner sends AE an Intent to Sell Notice
  - AE has 30 days to reply with a Purchase Notice for itself or an assignee (eligible buyer). Purchase of home within 60 days of purchase notice.
  - If no eligible buyer, restrictions fall away; however, any excess proceeds go to AE.

## 8. Legal Instrument:

What contractual mechanism should be used to impose and enforce controls over affordability (and use)?

- Covenant embedded in a deed
- Covenant or option imbedded in a ground lease
- Covenant or option executed as an independent contract
- Affordability incentives embedded in a second mortgage



## 9. Administration: Who should explain, monitor and enforce units produced under the ordinance?

- ✓ Self Enforcing
- ✓ Town committee
- ✓ Housing developer
- ✓ Third-party “steward”, public or private

## 10. Cost: How should the cost of administration be covered?

- Up-front subsidies or fees at the time of initial sale
- Operating subsidies or fees during occupancy of the resale-restricted home
- Back end fees at the time of resale

# Why work to preserve affordability?

- ✓ Maintain a stock of affordable, workforce housing in high-cost, appreciating markets
- ✓ Preserve regulatory concessions
  - Density bonus
  - Waiver or reduction of impact fees, parking, etc.
- ✓ Preserve regulatory exactions
  - Inclusionary zoning
  - Housing replacement requirements
- ✓ Preserve public subsidies





For more information contact:  
Workforce Housing Coalition of the Greater Seacoast  
(603) 766-3131

[info@seacoastwhc.org](mailto:info@seacoastwhc.org)  
[www.seacoastwhc.org](http://www.seacoastwhc.org)



Anne Crotty, Esq.  
(603) 964-2901  
[annecrotty@comcast.net](mailto:annecrotty@comcast.net)

Ben Frost  
NHHFA  
1.800.640.7239  
[bfrost@nhhfa.org](mailto:bfrost@nhhfa.org)  
[www.workforcehousingnh.com](http://www.workforcehousingnh.com)  
[www.nhhfa.org](http://www.nhhfa.org)

# Special thanks

John Davis

**Burlington Associates in Community  
Development, LLC**

P.O. Box 994

Burlington, Vermont 05402

802-651-0730 (phone & fax)

[BurlAssoc@aol.com](mailto:BurlAssoc@aol.com)

[www.burlingtonassociates.com](http://www.burlingtonassociates.com)

Great tools at:

[http://www.burlingtonassociates.com/resources/archives/ground\\_leases/resale\\_formulas/index.html](http://www.burlingtonassociates.com/resources/archives/ground_leases/resale_formulas/index.html)